

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

November 8, 2002

GSBCA 15764-RELO

In the Matter of DAVID A. DUNLAP

David A. Dunlap, Albuquerque, NM, Claimant.

Edward T. Nasalik, Executive Director, Heartland Finance Center, General Services Administration, Kansas City, MO, appearing for General Services Administration.

WILLIAMS, Board Judge.

A transferred employee of the General Services Administration (GSA) who is not subject to the Foreign Affairs Manual (FAM) regulation is not entitled to payment for air shipment of unaccompanied baggage (UAB), because the applicable regulation, the Federal Travel Regulation (FTR), does not authorize such payment. Claimant is entitled to have the Government pay the cost of shipping his household goods (HHG) in one lot in the most economical way, and the weight of the UAB may be included in calculating the weight of claimant's HHG.

Background

Claimant, David A. Dunlap, a transportation operations specialist with GSA, was transferred from Mannheim, Germany, to Ft. Worth, Texas, effective July 3, 2000.¹

In conjunction with his transfer from Germany to Texas, claimant was authorized travel expenses for himself and his wife, temporary quarters subsistence expenses (TQSE), real estate expenses, transportation of his

¹Upon claimant's return to the United States, there was no position in the El Paso, Texas, area, where he had previously lived. He was offered a position in Ft. Worth, Texas, until a position was available in the El Paso area, which did not occur until March 2001. Claimant moved from Ft. Worth to El Paso at no cost to the Government.

privately owned vehicle (POV), and shipment of household goods up to a maximum of 18,000 pounds. Claimant shipped 11,922 pounds of HHG under a Government bill of lading at a cost of \$11,216.22. The HHG were shipped in mid-June and arrived in mid-August.

The agency also authorized payment for shipment of "one lot unaccompanied baggage" weighing up to 450 pounds. In authorizing this payment, GSA invoked the FAM regulation "by default" since the employee was overseas, neither the FTR nor GSA's internal regulation addressed entitlement to shipment of UAB, and the agency determined that this entitlement should be granted. The FAM regulation is promulgated by the Secretary of State pursuant to statute and applies to the Departments of State, Commerce, and Agriculture and the Agency for International Development (AID).

According to the Government bill of lading, the gross weight of claimant's UAB was 961 pounds -- 511 pounds more than the authorized weight. The charges were \$3319.10 and the date of shipment was June 14, 2000. On February 19, 2002, the agency notified Mr. Dunlap that he was indebted to the Government in the amount of \$1764.89 -- the proportionate share of the cost of shipping the UAB attributable to the weight in excess of the allowable weight authorized.

Claimant argues that the shipment of UAB was in fact a second shipment of HHG which is permissible and should have been paid for by the Government. The agency states that the second shipment was classified as unaccompanied baggage because the household goods had already been shipped. The agency continues: "It is more practical for a person to ship only one household goods shipment from an overseas location back to the United States due to the transit time. An air baggage shipment (unaccompanied baggage) takes fourteen days, as opposed to the sixty-day transit time for shipment of household goods."

Discussion

In authorizing payment for the shipment of claimant's UAB, GSA invoked the FAM regulation, 6 FAM 148.2-1, which applies to the Departments of State, Commerce, and Agriculture and AID, but not to GSA. GSA looked to this regulation "by default" since the FTR and its own regulations do not address UAB, and the agency determined that this entitlement should be granted here.

The FAM regulation addressing unaccompanied baggage (UAB) states, in pertinent part:

6 FAM 148.2-1 UAB Authorization and Weight Allowance

a. An unaccompanied air baggage weight allowance for employees and their eligible family members authorized to travel is granted according to the following schedule unless otherwise prohibited by regulations:

| Gross Weight | kilograms | pounds |
|------------------------|-----------|--------|
| First person traveling | 113 | 250 |

Second person traveling

91

200

The agency had no authority to apply the FAM regulation in this case to grant an entitlement not otherwise granted by applicable statute and regulation. FAM regulation 6 FAM 148.2-1 applies by its terms to the Departments of State, Commerce, and Agriculture and AID. Claimant is not employed by any of these agencies; he is an employee of GSA, which has not adopted the FAM pursuant to statute or other legal authority. Nor is he a member of the Foreign Service, transferred overseas pursuant to the Foreign Assistance Act, or subject to regulations which expressly adopted the FAM.

In cases where this Board and the Comptroller General have recognized entitlements granted by the FAM regulation, that regulation was properly invoked pursuant to binding legal authority. E.g., Carlos L. Edwards, GSBCA 15192-RELO, 00-1 BCA ¶ 30,877; Desiree Fray, GSBCA 15012-TRAV, 99-2 BCA ¶ 30,485 (FAM applies to State Department employees); Kanwar H. Kahn, GSBCA 14892-RELO, 99-2 BCA ¶ 30,537; Bonnie Coates, GSBCA 14681-RELO, 99-1 BCA ¶ 30,363 (FAM applies to members of Foreign Service pursuant to Foreign Service Act, 22 U.S.C. § 4081); Ira A. C. Peets, GSBCA 15294-RELO, 00-2 BCA ¶ 31,058 (FAM applies to Internal Revenue Service employee transferred overseas pursuant to Foreign Assistance Act); Fred Kuta, B-180519 (Oct. 7, 1974) (Veterans Administration (VA) adopted regulations in Volume 6 of the FAM as the governing regulations for overseas travel for VA employees). Such is not the case here, and the invocation of an inapplicable regulation "by default" to confer a benefit not granted in the controlling regulation is inappropriate.

It is well established that an agency may not authorize recoupment of an expense that is not permitted by statute or regulation or to increase or decrease entitlements fixed by statute or regulation. Thomas W. Schmidt, GSBCA 14747-RELO, 00-1 BCA ¶ 30,858; Daniel P. Carstens, GSBCA 14519-RELO, 98 -2 BCA ¶ 30,048; Michael K. Vessey, B-214886 (July 3, 1984); Erwin E. Drossel, B-203009 (May 17, 1982). Here, the agency's travel-authorizing personnel mistakenly invoked a regulation which granted claimant a benefit to which he was not entitled, since the FTR does not authorize reimbursement for shipping unaccompanied baggage. The agency's mistake does not operate to expand the entitlement established by regulation. The Government is not bound by the erroneous advice of its officials even when the employee has relied on this advice to his detriment. E.g., John J. Cody, GSBCA 13701-RELO, 97-1 BCA ¶ 28,694 (1996). Erroneous travel orders, reflecting mistaken assumptions on the part of authorizing officials, cannot obligate the Government to expend monies contrary to regulation. Charles M. Ferguson, GSBCA 14568-TRAV, 99-1 BCA ¶ 30,299; James F. Black, GSBCA 14548-RELO, 98-2 BCA ¶ 29,876; William Archilla, GSBCA 13878-RELO, 97-1 BCA ¶ 28,799.

The Comptroller General in Ronald Bartell, B-225977 (Apr. 28, 1987) expressly recognized that entitlements which were granted in the FAM regulation but were not included in the FTR could not be applied to employees subject to the FTR. Bartell involved an employee of the Department of Energy who sought travel expenses incident to emergency personal travel performed from an overseas duty post. The Comptroller General concluded that the employee could not be reimbursed, reasoning:

[The FAM] regulation applies to members of the Foreign Service in the Department of State and related agencies which are covered by the Foreign Service Act of 1980. Paul Hellmich, B-216882, March 25, 1985.

The laws and regulations governing the entitlement of Federal employees, other than members of the Foreign Service, to be reimbursed for travel expenses are contained in Chapter 57 of title 5, United States Code (1982), and the Federal Travel Regulations . . . (FTR). There is nothing in 5 U.S.C. Chapter 57 or in the FTR which authorizes an employee to be reimbursed for personal travel from foreign area to the United States because of a family emergency which arose in the United States. Hellmich, cited above.

Given that the FAM regulation does not apply to claimant, we look to the FTR to determine proper payment for shipping his goods. The FTR provides that the cost of shipping HHG may be reimbursed from any origin to any destination so long as the amount paid by the Government does not exceed the cost of transporting the property in one lot by the most economical route from the old official duty station to the new official duty station. 41 CFR 302-8.2(e) (2000); Thomas A. McAfoose, GSBCA 15295-RELO, 00-2 BCA ¶ 31,009.

The Board and the Comptroller General have construed this regulation to permit payment for an additional shipment of HHG so long as the total cost does not exceed the cost of moving an employee's HHG at a maximum weight of 18,000 pounds in one lot in the most economical way. Lore Ann Cardenas, GSBCA 15074-RELO, 00-1 BCA ¶ 30,790; Eldean K. Minary, 73 Comp. Gen. 141 (1994); Dr. William H. Furhman, B-256996 (Nov. 20, 1995).

Applying this precedent here, the weight of claimant's UAB can be added to the actual weight of claimant's HHG for a total of 12,883 pounds, and the Government should pay for the constructive cost of shipping the HHG at that weight in one lot in the most economical way.

Decision

Claimant is not entitled to have the Government pay for shipping any unaccompanied baggage via air. Thus, the agency erroneously paid for shipping 450 pounds of UAB via air, and may recoup the amount of that payment from claimant. However, claimant is entitled to have his UAB shipped as part of his HHG, since the total weight of his HHG including the UAB did not exceed 18,000 pounds. The agency should determine the constructive cost of shipping 12,883 pounds of claimant's HHG (11,922 pounds of HHG, plus 961 pounds of UAB) in one lot in the most economical way from Mannheim to Ft. Worth and limit its financial responsibility to that cost.

The total amount of shipping cost for which the Government is responsible may be less than what the Government has already paid. In this event, the claimant will owe the difference to the agency.

If the head of the agency determines that collection of the debt "would be against equity and good conscience and not in the best interests of the United States," the agency may waive repayment of the debt. 5 U.S.C. § 5584(a) (2000). The statute authorizing waiver of repayment does not give the Board any power to direct an agency head to make such a finding. Therefore, the Board does not direct or recommend that the agency waive this debt, but simply points out that the agency possesses the authority to do so in accordance with statute. Michael F. Morley, GSBCA 15457-RELO, 02-1 BCA ¶ 31,688; Brian Johnson, GSBCA 15316-RELO, 01-1 BCA ¶ 31,337; Jerry B. Roden, Jr., GSBCA 14756-RELO, 99-2 BCA ¶ 30,502; Patricia Russell, GSBCA 14758-RELO, 99-1 BCA ¶ 30,291.

MARY ELLEN COSTER WILLIAMS
Board Judge